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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,462	11/24/2003	Thomas J. Boyd	7052-01	4081

23909 7590 04/10/2007  
COLGATE-PALMOLIVE COMPANY  
909 RIVER ROAD  
PISCATAWAY, NJ 08855

EXAMINER
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ROBERTS, LEZAH

ART UNIT	PAPER NUMBER
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1614

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/10/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/720,462	<b>Applicant(s)</b> BOYD ET AL.	
	<b>Examiner</b> Lezah W. Roberts	<b>Art Unit</b> 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

This Office Action is in response to the Amendment filed January 25, 2007. All previous rejections have been withdrawn unless stated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claims***

#### **Claim Rejections - 35 USC § 112 – Indefiniteness (New Rejection)**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 29 recites the limitation "the flavorant" in the first line of the claim. The claim from which it depends does not recite a flavorant but recites a breath freshening agent. There is insufficient antecedent basis for this limitation in the claim.

#### **Obvious-Type Double Patenting – (New Rejection)**

Claims 14-35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,669,929 in view of Colodney et al. (US 3,944,661). Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims

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are more limited in scope insofar as the independent claim recites the film flakes comprise dyes, the shapes and dimensions of the flakes, and the type of gel vehicle, whereas the instant claims are more broader in scope. The instant claims are different from the patented claims insofar as they do not recite titanium coated mica flakes.

Colodney et al. disclose clear dentifrices comprising iridescent flakes. The flakes are used to provide a unique sparkling appearance having very good characteristics as a dentifrice, such as superior stain removal properties. The reference differs from the instant claims insofar as it does not disclose flakes formed from a water hydratable film matrix.

It would have been obvious to one of ordinary skill in the art to have incorporated the titanium coated mica flakes into the compositions of the instant claims motivated by the desire to provide dentifrice with a unique sparkling appearance having very good characteristics as a dentifrice, such as superior stain removal properties, as disclosed by the secondary reference.

#### **Obvious-Type Double Patenting – (Previous Rejections)**

Applicant will submit a Terminal Disclaimer and Statements of Common Ownership when the claims are deemed allowable; therefore the following rejections are maintained.

1) Claims 1-15 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-28 and 44-46

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of copending Application No. 10/739803 in view of Zerbe et al. (US 2003/0053962).

The rejection is maintained and is applied to claims 14-35. Claims 1-13 have been cancelled.

2) Claims 1-15 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-41 and 44-46 of copending Application No. 10/860377 in view of Zerbe et al. (US 2003/0053962). The rejection is maintained and is applied to claims 14-35. Claims 1-13 have been cancelled.

Claims 14-35 are rejected.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lezah Roberts  
Patent Examiner  
Art Unit 1614



Frederick Krass  
Primary Examiner  
Art Unit 1614

